(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

Criminal Appeal No. 649 of 2001

Ammended in memo Appeal as per Court order Date. 16-08-2001

16-08-2001

Appellants : In Jail

1. Ramnath S/o. Shri Dhar Sai Caste Kanwar
2. San Shyam Sai @Khora S/o. Dhursai Caste Kanwar
3. Anuk Sai S/o. Photu Ram Caste : Kanwar, Age 40 years.

All are resident of Village Mordapara Deogarh P.S. Sitapur, Distt. Surguja (C.G.)

VERSUS

Respondent : State of Chhattisgarh, Through S.O. Sitapur.

CRIMINAL APPEAL UNDER SECTION 374 OF CRIMINAL PROCEDURE CODE

(54)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Criminal Appeal 649/ सन् 2001

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DB: HON'BLE SHRI L.C. BHADOO AND
HON'BLE SHRI DHIRENDRA MISHRA, JJ

Criminal Appeal No. 649/2001

Appellants : Ramnath and others

Versus

Respondent : State of Chhattisgarh

Shri Vineet Pandey, Advocate for the appellants.

Shri Akhil Mishra, Panel Layer, for the State.

ORAL JUDGMENT
(17-11-2006)

Per L.C. Bhadoo, J

Today the matter is listed for hearing on M.(Cri.)P.No.712/2006.

Counsel for the accused-appellants submitted that in this case, accused-appellants are in detention since last about 6 years and 3 months and the only allegation against the accused-appellants is that accused Shyam Sai assaulted Raghuvir with a Lathi on his head, when the deceased Raghuvir was fishing in the tank, that too in a sudden quarrel, therefore, the appeal be heard finally.

Learned Panel Lawyer also agreed that the appeal may be heard finally. Accordingly the appeal is heard finally.

2. This appeal is directed against the judgment of conviction and order of sentence dated 20-7-2001 passed in Sessions Trial No. 191/2000 whereby the learned First Additional Sessions Judge, Ambikapur, after holding the accused-

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आदेश पत्रक (पूर्वानुबद्ध)

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appellants guilty for commission of murder of Raghubir, convicted them under Section 302 read with Section 34 of I.P.C. and sentenced each of the accused to undergo imprisonment for life and to pay a fine of Rs. 1,000/-, in default of payment of fine, to further undergo R.I. for six months.

3. The case of the prosecution in brief is that on 18-6-2000 Raghuvir (since deceased) along with Nainsai went to Daroga Muda tank and they were catching fish. At about 4 P.M., Durga came there and asked them not to catch the fish. Ramnath, Anuk Sai also asked them not to catch the fish, on which Raghuvir said that who is objecting. In the meantime, accused Ramnath and Anuk Sai started abusing them, these two persons after caught hold of Raghuvir started assaulting him with hands and fists. At that time, Shyam Sai came abusing and attacked twice on his head with a bomboo stick, as a result of which, Raghuvir fell down, became unconscious. The accused persons fled the scene of occurrence. Banwari Das came on the scene of occurrence, Banwari Das and Nainsai took Raghuvir to his house. The matter was reported by Nainsai under Ex. P-1 in Police Station Sitapur, based on that the First Information Report Ex. P-10 was registered. Injured Raghuvir was sent to hospital for treatment under Ex. P-16 where during treatment, Raghuvir succumbed to the injuries on 20th June 2000. Merg intimation Ex.P-17 was sent to the police station and bamboo stick- the weapon of offence was seized under Ex. P-18 on production by Nainsai, post mortem on the body of Raghuvir was conducted

आदेश पत्रक (पूर्वानुबद्ध)

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by Dr. M. Nikunj (P.W. 1). He prepared post mortem report under Ex. P-3, in which he opined that cause of death was coma as a result of head injury. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Ambikapur, who in turn committed the case to the Sessions Judge, Sarguja Ambikapur wherefrom the learned First Additional Sessions Judge, Ambikapur received the case on transfer.

4. Prosecution in order to establish the charge examined 9 witnesses. Statements of accused persons were recorded under Section 313 of Cr.P.C. in which they denied the material appearing against them in the prosecution evidence and further stated that they have been falsely implicated in the crime. The accused persons examined two witnesses namely D.W. 1 Human Singh and D.W. 2 Abhinandan.

5. Learned First Additional Sessions Judge after hearing the arguments advanced and perusal of the record, convicted and sentenced the accused persons as aforementioned.

6. We have heard Shri Vineet Pandey on behalf of the accused persons and Shri Akhil Mishra, on behalf of the State.

7. Shri Pandey has not disputed homicidal death of Raghuvir. Apart from that, from medical evidence of P.W. 1 Dr. M. Nikunj and eye-witnesses P.W. 3 Nainsai

मामला क्रमांक ...CR A 649/... **सन् 2001**

आदेश पत्रक (पूर्वानुबद्ध)

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	and P.W. 4 Banwari, it is established that the death of Raghuvir was homicidal in nature. 8. As far as involvement of the accused persons in crime in question is concerned, learned counsel for the appellants does not dispute that fact also. P.W. 3 Nainsai who was present on the scene of occurrence has stated that he along with Raghuvir were fishing in Muda tank. At that time, Durga, Ramnath and Anuk Sai came and said that they should not catch the fish, on which, Raghuvir replied that they will go immediately, however Ramnath abused. In the meanwhile, Shyamsai came carrying club in his hand and attacked Raghuvir on his head twice, as a result of which Raghuvir started shivering, he fell down. The accused persons fled the scene of occurrence. The above evidence has been corroborated by P.W. 4 Banwari who came on the scene of occurrence during altercation. In their cross-examination, the defence has not been able to elicit any circumstance which make this witness unreliable and untrustworthy. The above ocular evidence stands corroborated by the medical evidence. As per medical evidence, Dr. M. Nikunj has stated that he conducted post mortem on opening of head, he found that there was a fracture of skull bone; therefore, the medical evidence also corroborates the ocular evidence of P.W. 3 Naindas and P.W. 4 Banwari. Therefore, we are of the considered opinion that the finding of the trial Court to the extent of involvement of accused persons in	

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committing murder is established and to this extent there is no illegality or infirmity in the judgment of the trial Court.

9. Shri Pandey argued that the manner in which Raghuvir was assaulted and there was only one injury on his head, it cannot be said that the accused persons attacked with intention to cause death of Raghuvir.

10. On the other hand, Shri Mishra supported the judgment of the trial Court.

11. In order to appreciate the arguments advanced by learned counsel for the respective parties, we have perused the evidence. As per the evidence, Raghuvir and Nainsai were fishing in Muda tank without any right and without permission of the Samiti, therefore, Ramnath and Anuk objected Raghuvir as to why he was fishing in the tank, on which, Raghuvir said that they will go just now. However, in the meantime, Ramnath started abusing. In the meantime, Shyamsai came with a Lathi, attacked on the head of Raghuvir twice, therefore, from the above evidence, it appears that Raghuvir was fishing in the tank without any right, which was objected by accused persons saying as to why he was fishing, in the meantime, Ramnath started abusing and Shyamsai came with a Lathi and attacked on the head of Raghuvir, all of a sudden without any preparation and quarrel took place without any preparation and on a spur of moment, Shyamsai attacked the deceased with lathi. Therefore, in the above circumstances, it cannot be said that Shyamsai assaulted

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CA 649/01 **सन् 2004**

आदेश पत्रक (पूर्वानुबद्ध)

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deceased Raghuvir with intention to cause his death. However, the manner in which, Shyamsai attacked on head of Raghuvir with lathi, Ramnath abused and Anuk Sai was also with them, it can safely be inferred that the accused persons had definite knowledge that by attacking on the head with lathi they are likely to cause death of Raghuvir. Therefore, in the above circumstances, offence against the accused persons does not travel beyond Section 304 Part II of I.P.C.

12. In the result the appeal partly succeeds. The conviction of the accused persons under Section 302 read with Section 34 of I.P.C. and sentence imposed upon them under that section are set aside, instead, they are convicted for offence under Section 304-II read with Section 34 of I.P.C. and each of the accused is sentenced to undergo 7 years R.I.

13. It is stated that accused Ramnath and Anuk Sai were in detention since 21-6-2000 to 26-2-2001 and thereafter from the date of judgment i.e. 20-7-2001 till date and accused Shyamsai was in detention from 21-6-2000 to 12-1-2001 and thereafter with effect from 20-7-2001 till date. All the accused persons shall be entitled for set up of the above period of detention against the sentence imposed upon them.

14. In view of the above judgment, M(Cr.) P. No. 712/2006 stands disposed of.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

P.T.O.

24.11.05 27-2-06